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JURY'S DUTY IN CRIMINAL CASES. — The case of *Com. v. McManus*, recently decided by the Supreme Court of Pennsylvania, (21 Atl. Rep. 1018 and 22 Atl. Rep. 761) contains an interesting discussion of the proposition that the jury are judges both of law and fact in criminal cases. The case came up on exception to a ruling of the trial judge, refusing to direct the jury that they were the judges of law and fact. On this point the judge ruled that the jury were bound to decide the case on the law and the evidence; that the court's statement of law was the best evidence of the law which the jury had, and therefore in view of that evidence, and viewing it as evidence only, the jury must be guided by what the court said was the law. This ruling was affirmed by the Supreme Court, Paxson, C. J., saying that the charge of the court was the best evidence of the law within the jury's reach, and therefore the jury were bound to follow it. Mitchell, J., in his opinion, denies emphatically that the jury are the judges of law as well as of fact. He says that the doctrine arose from the power of the jury to give general verdicts, which, if in favor of acquittal, could not be revised by the court. But to prove the doctrine true, a court should have no power of revision when the verdict was against the prisoner. This right of revision by the court has never been disputed, and conclusively negatives the jury's right to be judges of the law.

It would seem that Mitchell, J.'s, view is correct and his reasoning conclusive. There is always danger, as was pointed out by the court of Georgia in *Higginbotham v. Campbell* (11 S. E. Rep. 1027), that if the jury are told that they are judges of law as well as of fact, they may think themselves not bound to accept the court's statement of law, any more than they are bound to believe a witness to a fact.

NATURE OF THE RIGHTS IN A DEAD BODY — DAMAGES FOR MENTAL SUFFERING. — An interesting and in some ways helpful opinion was delivered last month in Minnesota, on the confused subject of damages for mental suffering caused by mutilation of a corpse.¹ The action was brought by a widow for the unlawful dissection of the body of her

¹ *Larson v. Chase*, 50 N. W. Rep. 238 (Minn. 189.)

deceased husband, and the only damage alleged was the mental anguish and the nervous shock. The demurrer, argued on the ground that the widow had no property and no legal interest in the corpse, and that the mental suffering was no ground of action, was overruled, and the decision is supported on appeal. The common-law doctrine, that no one had any rights in a dead body, has now been, says Judge Mitchell, thoroughly repudiated by the American courts, whose lack of ecclesiastical law left the temporal courts the sole protectors of the dead, and of the interest of the living in their dead. The whole subject is much confused by the technical discussion as to whether a corpse is property in the commercial sense, and, as the court points out, the discussion of that question is entirely unnecessary to the decision of this. The important fact is that the nearest family representative has a legal right to the body for the purpose of burial, and the disturbance of that right, like the disturbance of any other right recognized by the law, is a subject for compensation.

Having stated thus broadly the cause of action, the court points out that the confusion on the subject of damages grows out of the common error of failing to distinguish an element of damage from a cause of action, as is shown by the frequent misuse of the leading case of *Lynch v. Knight*, which is well discussed by Judge Mitchell. Once given your cause of action, damages cover much that, standing alone, would form no ground of recovery.

In thus making the right infringed a branch of the right to undisturbed family relations, and so avoiding the vexed question of property, and in supporting it by reference to cases where substantial damages have been given for an assault without physical contact, and for false imprisonment without contact, to which might be added the case of recovery by a husband for an attack on his wife where there was no loss of service, the court follows directly the line of argument used in the discussion of the growth in this branch of the law in the last edition of Sedgwick on Damages. Certainly it is a more satisfactory explanation of a right that every one feels must exist; and, as the court says, it is much more satisfactory to our common sense, as well as to our feelings, to base the recovery on a right connected directly with the real and substantial wrong than on a technical and dimly understood right of property.

POLITICAL ASSESSMENTS. — The *United States v. Newton*, a case interesting from its bearing on the civil-service reform question, has lately been decided in the Supreme Court of the District of Columbia. The defendant was indicted under section 12 of the Civil-Service Act, which provides in effect that no one shall solicit or receive any contribution for political purposes in any room or building occupied in the discharge of official duties by any officer or employé of the United States. The defendant had sent letters to various persons in government buildings, referring to the State campaign in Virginia, requesting such persons to join the Republican Club and "to make such further contribution as your means will permit." The indictment did not allege that the persons solicited were government employés. On this ground the defendant demurred, and also argued that the act was unconstitutional, as infringing the rights of the citizen. The demurrer was overruled, the court saying that the right to forbid the levying of political assessments in public buildings was clearly within the power